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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 UNITED STATES OF AMERICA,

11 Plaintiff,

Case No. 2:13-cr-0424-LDG (VCF)

12 v.

ORDER

13 EDWIN VALLADARES-FERNANDEZ,

14 Defendant.

15
16 The defendant, Edwin Valladares-Fernandez, sent a letter to this Court which has
17 been docketed as a Motion to Review Sentence, and which the Court has considered as a
18 Motion Pursuant to 28 U.S.C. §2255 to Vacate, Set Aside, or Correct Sentence (ECF No.
19 47). The United States opposes the motion (ECF no. 49). The Court will deny the motion.

20 Valladares-Fernandez pled guilty to being a deported alien found unlawfully in the
21 United States in violation of 8 U.S.C. § 1326. In determining Valladares-Fernandez'
22 sentence, the Court imposed an enhancement pursuant to §2L1.2(b)(1)(A)(ii) because he
23 had previously been deported after sustaining a felony conviction for a crime of violence.
24 Critically, Valladares-Fernandez was sentenced pursuant to the advisory Sentencing
25 Guidelines in effect on the date of his sentencing.

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1 To the extent Valladares-Fernandez argues that his prior felony conviction no longer
2 qualifies as a crime of violence pursuant to the Supreme Court's decision in *Johnson v.*
3 *United States*, 135 S.Ct. 2551 (2015), his argument is foreclosed by *Beckles v. United*
4 *States*, 137 S. Ct. 886 (2017). In *Johnson*, the Supreme Court held that the vagueness of
5 the residual clause in the definition of a "violent felony" in the Armed Career Criminal Act of
6 1984, 18 U.S.C. § 924(e)(2)(B) (ACCA), violated the Constitution's Due Process Clause. 135
7 S.Ct. at 2557, 2563. However, Valladares-Fernandez was sentenced pursuant to advisory
8 Sentencing Guidelines. In *Beckles*, the Supreme Court held that "the advisory Sentencing
9 Guidelines are not subject to a vagueness challenge under the Due Process Clause . . ."
10 *Id.* at 892.

11 To the extent Valladares-Fernandez argues that, at the time of his sentencing, his
12 prior felony conviction did not qualify as a crime of violence pursuant to the Supreme
13 Court's decision in *Johnson v. United States*, 130 S.Ct. 1265 (2010), any such claim is
14 untimely. Relief sought pursuant to §2255 must generally be brought within one year of the
15 date on which the judgment became final. The Court received Valladares-Fernandez' letter
16 more than one year after his conviction became final. Further, Valladares-Fernandez has
17 defaulted on such claim. "[T]he general rule [is] that claims not raised on direct appeal may
18 not be raised on collateral review unless the petitioner shows cause and prejudice."
19 *Massaro v. United States*, 538 U.S. 500, 504 (2003). Valladares-Fernandez has neither
20 shown cause nor prejudice.

21 Accordingly, having construed Valladares-Fernandez' letter as seeking relief
22 pursuant to 28 U.S.C. §2255, the Court must deny the motion.

23 Certificate of Appealability

24 To appeal this order, Valladares-Fernandez must receive a certificate of
25 appealability. 28 U.S.C. § 2253(c)(1)(B); Fed. R. App. P. 22(b)(1); 9th Cir. R. 22-1(a). To
26 obtain that certificate, he "must make a substantial showing of the denial of a constitutional

1 right, a demonstration that . . . includes showing that reasonable jurists could debate
2 whether (or, for that matter, agree that) the petition should have been resolved in a
3 different manner or that the issues presented were adequate to deserve encouragement to
4 proceed further." *Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000) (quotation omitted).
5 This standard is "lenient." *Hayward v. Marshall*, 603 F.3d 546, 553 (9th Cir. 2010) (en
6 banc). In the present matter, the Supreme Court's decision in *Beckles* is dispositive and
7 precludes this Court from finding that reasonable jurists could debate whether (or, for that
8 matter, agree that) Valladares-Fernandez can challenge his sentence pursuant to *Johnson*.
9 In addition, the Court is precluded from finding that reasonable jurists could debate whether
10 he timely filed his challenge to his sentence or that he has not defaulted on his challenge.
11 Accordingly, the Court will not grant a certificate of appealability.

12 Therefore, for good cause shown,

13 THE COURT ORDERS that Defendant Edwin Valladares-Fernandez' Motion for
14 Appointment of Counsel (ECF No. 46) is DENIED.

15 THE COURT FURTHER ORDERS that Defendant Edwin Valladares-Fernandez'
16 Letter, which the Court has docketed as a Motion to Review Sentence and construed as a
17 Motion Pursuant to 28 U.S.C. §2255 to Vacate, Set Aside, or Correct Sentence (ECF No.
18 47) is DENIED.

19 THE COURT FURTHER ORDERS that it will not grant a certificate of appealability.

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21 DATED this 31 day of January, 2020.


22 Lloyd D. George
23 United States District Judge
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